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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,791	04/25/2001	David Russell Blake	9374.21USWO	3690

23552 7590 01/29/2003

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EXAMINER
WEBER, JON P

ART UNIT	PAPER NUMBER
1651	15

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/763,791	BLAKE ET AL.	
	Examiner	Art Unit	
	Jon P Weber, Ph.D.	1651	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See attachment*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-18, 35 and 38-39*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Jon P Weber, Ph.D.
Primary Examiner
Art Unit: 1651

Status of the Claims

The response with amendments after Final filed 23 December 2002 has been received and entered. Claims 1-18, 35 and 38-39 have been presented for examination.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 11 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 now recites "the second portion being sterile" which still does not clearly indicate what the portion is. For example, the urine of a healthy person is "sterile" but one would not expect to use it in a formula feed. It is the nature of the second portion that is vague and indefinite, not whether it is sterile.

Claim Rejections - 35 USC § 102

Claims 1, 7-8, 11, 15 and 33-34 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cooray et al. (1995).

It is argued that cows milk per se is not suitable for human infant formula as a breast milk substitute.

For hundreds of years, people all over the world have been substituting cows milk for human milk. They can't all be wrong. While it now agreed that cows milk is not best for human infants, it has been used successfully for quite some time.

Claims 1-4, 6-11, 14-17 and 33-34 stand rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al. (1976).

Claims 1-17 and 33-34 stand rejected under 35 U.S.C. 102(b) as being anticipated by Ho et al. (1978).

It is now argued that the half milk/half cream or saline solutions are not suitable as formula feed for human infants or qualify as a substitute for breast milk.

Once again, while these may not be best for humans, they are still substitutes that could be used. The fact that these products don't have the same ratio of constituents as human breast milk is only a recently recognized concern. A product does not have to be best to be good or suitable.

Claims 1, 6-10 and 33-34 stand rejected under 35 U.S.C. 102(b) as being anticipated by De Jong et al. (US 5,747,078).

It is argued that the food products contain raw milk but do not disclose XOR in a formulation suitable for human infants.

The presence of XOR in raw milk is an inherent property. Again, the product does not have to be best for human infants to be good enough for use.

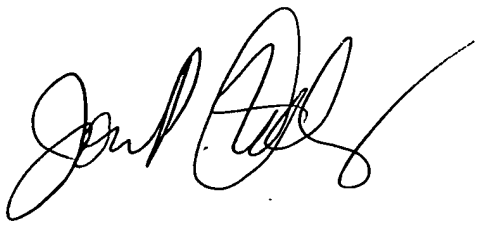
Claim Rejections - 35 USC § 103

Claims 1-18 and 33-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Björck et al. (1979), Ho et al. (1978), Clark et al. (1976), Zikakis (US 4,238,566), Antrim et al. (US 4,961,939) and De Jong et al. (US 5,747,078) in view of Reddy et al. (US 5,876,990).

It is argued that none of the references suggest adding XOR to a human formula feed that is nutritionally complete. Reddy is said only to add XOR to animal feed to improve health and reduce odors.

The primary references do disclose nutritionally complete formula. Reddy provides sufficient motivation to add XOR to formula feed. Humans and their infants are animals.

No claims are allowed.



Jon P. Weber, Ph.D.
Primary Examiner